IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

OP.No. 7312 of 2002(U)
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PETITIONER:

P.K.CHANDRABABU,
MANAGER, S.N.L.P. SCHOOL,
VAIKAPRAYAR, KOTTAYAM.

BY ADV. SRI.V.G.ARUN.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION(H) DEPARTMENT, TRIVANDRUM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, TRIVANDRUM.**

3. **THE DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM.**

BY GOVERNMENT PLEADER SRI. V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.7312/2002

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.A4/4861/2000 DT. 16.5.2000 OF THE DEPUTY DIRECTOR OF EDUCATION.

EXT.P2:- COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE DIRECTOR OF PUBLIC INSTRUCTION DT. 5.8.2000.

EXT.P3:- COPY OF THE ADDITIONAL STATEMENT FILED BY THE APPELLANT IN APPEAL NO.F5/70712/2000/DPI DT. 18.6.2001.

EXT.P4:- COPY OF THE APPOINTMENT ORD NO.D.5761/2000/K.DIS. DT.13.3.01.

EXT.P5:- COPY OF THE ORDER NO.K.DIS 70712/2000/F5/DPI DT. 19.6.01 OF THE ADDL.DIRECTOR OF PUBLIC INSTRUCTION.

EXT.P6:- COPY OF THE REVISION PETITION FILED BEFORE THE GOVERNMENT BY THE MANAGER DT. 20..7.01.

EXT.P7:- COPY OF THE GO.(Rt) NO.4041/2001/G.EDN DT.29.10.01 OF THE GOVERNMENT .

EXT.P8:- COPY OF THE GO(MS) 123/91/G.EDN. DT. 5.8.01 OF THE GOVERNMENT.

/TRUE COPY/

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KURIAN JOSEPH J.

O.P. NO.7312 OF 2002

Dated 13th June, 2007.

J U D G M E N T

Whether the petitioner is entitled to appoint a fresh hand in the vacancy which arose upon the re-deployment of a protected teacher in the school managed by the petitioner is the crucial question to be considered in this case. Government has passed Ext.P7 order. According to the petitioner, the Government has not considered the impact of Ext.P8 Government Order dated 5.8.1991. Learned Government Pleader points out that the vacancy consequent on the re-deployment of the protected teacher appointed by the petitioner arose on 1.6.2000 whereas the 51-A claim arose only on 1.4.2001. But it is seen that in respect of the vacancy which arose on 1.6.2000, the Deputy Director had not furnished the list of any protected teacher so as to enable the Manager to make appointment. It is also contended that as on 1.4.2001, when the claim under Rule 51-A Chapter XIV-A K.E.R. arose, there was no protected teacher waiting to be appointed as per the direction issued by the Deputy Director of Education. Still further it is contended that for the only reason

that the vacancy is that of protected teacher, the post cannot be kept vacant until a protected teacher is available for absorption. It was in such circumstances only, the vacancy was filled up on 1.4.2001. Neither in the impugned order or in the counter affidavit, these aspects which require factual verification are addressed by the Government. I quash Ext.P7 with a direction to the Government to consider the matter afresh with notice to the petitioner and pass appropriate orders, referring to the contentions taken by the petitioner, some of which are referred to above. The needful shall be done within three months from the date of production of a copy of the judgment.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. NO.7312 OF 2002 (U)

J U D G M E N T

Dated 13th June, 2007.